CASE

OF

ELIZABETH PERRY,

OF

PENSHURST-PLACE, IN THE COUNTY OF *KENT*,

Relict of *William Perry*, Eſquire, of *Turville-Park*,

IN THE COUNTY OF *BUCKINGHAM*,

Reſpecting her Claim to the Barony of *Sydney* of *Penſhurſt*.

Patent.

Ibid.

Ibid.

HIS Majeſty King *James* the Firſt, in the Firſt Year of his Reign, created, by Letters Patent, Sir *Robert Sydney*, Knight, a Baron and Peer of the Realm of *England*, by the Title of Lord *Sydney* of *Penſhurſt*, in *Kent*, to him and the Heirs Male of his Body; and afterwards by ſeveral Letters Patent, in the Third and Sixteenth Years of his Reign, created him the ſaid *Robert*, Viſcount *Liſle* and Earl of *Leiceſter*, with Limitation as aforeſaid: all which Honours deſcended to *Robert*[a] his Son and Heir, and from him to *Philip*[b] his Son and Heir.

[a] *Penſhurſt* Regiſter and Marriage Settlements. Lords Journals, 17 *March* 1626.

[b] Lords Journals, Vol. 3d, P. 210, and Pariſh Regiſter.

Pariſh Regiſter, and Lords Journals, 11 *July* 1689.

Robert, by Curteſy Viſcount *Liſle* (the Claimant's Grandfather, and whoſe Heir ſhe is) eldeſt Son of the ſaid *Philip*, was ſummoned to Parliament in the Firſt Year of the Reign of King *William* and Queen *Mary*, as a Baron and Peer of the Realm of *England*, the Writ being directed "*Roberto Sydney de Penſhurſt*, Chevalier," and being alſo ſummoned to the next enſuing Parliament in the ſaid Reign, ſat and voted in both Parliaments by the Title of Lord *Sydney* of *Penſhurſt*, in the Life-time of his Father the ſaid *Philip* Earl of *Leiceſter*.

Parliament Pawns, 7 *William* the IIId. Lords Journals, Vol. 15. p. 603.

Lords Journals, Vol. 16. Page 253.

Upon the Death of ſaid *Philip* Earl of *Leiceſter*, the ſaid *Robert* Lord *Sydney* of *Penſhurſt* ſucceeded to the ſaid Titles and Dignities of Baron *Sydney* of *Penſhurſt*, Viſcount *Liſle*, and Earl of *Leiceſter*, created by Letters Patent as aforeſaid, and died, ſeiſed thereof to him and the Heirs Male of the Body of *Robert* Firſt Earl of *Leiceſter*, and of the Barony of *Sydney* of *Penſhurſt*, created by Writ to him and his Heirs.

[c] Pariſh Regiſter, and Lords Journals. Vol. 17, Page 187.

[d] Marriage Settlement, 28 *March* 1700. Regiſters of *Penſhurſt*, and Lords Journals, 31ſt *October* 1705.

[e] Parole Evidence and Lords Journals, Vol. 25, Page 184.

[f] Marriage Settlement, 9 *June* 1726.

Regiſters of Chriſtenings and Parole Evidence.

Pariſh Regiſter and Parole Evidence.

Ibid. & Ibid.

Upon his Death the aforeſaid Titles and Honours deſcended from him to *Philip*[c] his Son and Heir, who dying without Iſſue, was ſucceeded therein by his Brother *John*[d], who dying unmarried[e], the Barony in Fee deſcended, and was in Abeyance between the Claimant and her Siſter *Mary*, his Heirs general, and alſo Heirs general of the ſaid *Robert* their Grandfather, they being the Daughters and Heirs[f] of the Honourable *Thomas Sydney*, next Brother to the ſaid *John*. [Said Titles, limited by Patent to Heirs Male, deſcending to *Jocelyne*, the youngeſt Brother, and on his Death becoming extinct.]

The Claimant's ſaid Siſter married Sir *Brownlow Sherrard*, Baronet, and died in the Year 1758, without Iſſue, leaving the Claimant ſole Heir to the ſaid Barony of *Sydney* of *Penſhurſt*, created by Writ, as well as the Inheritrix of all Lands and Seignories thereunto belonging.

In the Month of *February* 1780, the Claimant preſented her humble Petition to His Majeſty, ſtating as above, and praying, That His Majeſty would be graciouſly pleaſed to confirm the ſaid Barony of *Sydney* to the Claimant and the Heirs of her Body, with all its Rights, Immunities, and Privileges, as in like Caſes hath been uſually granted to ſeveral Families of the Kingdom by His Majeſty's Royal Progenitors and Predeceſſors.

In the ſame Month the ſaid Petition was referred by His Majeſty to his then Attorney General, who was created a Peer before he had made his Report thereon; and the ſaid Petition was then referred to His Majeſty's late Attorney General: Who,

15th *April* 1782, Attorney General's Rept.

On the 15th of *April* 1782, made his Report to His Majeſty thereon, to the Effect after mentioned; and His Majeſty hath been graciouſly pleaſed to refer the ſaid Petition to the Right Honourable the Houſe of Peers.

Lords Journals, 11th *July* 1689, 1ſt *William* and *Mary*.

The Writ under which this Dignity is claimed, iſſued 11th July 1689, and was in the following Words: "Gulielmus & Maria, Dei Gratia, Angl. Scot. *Franc.* & *Hib'niæ*, Rex & Regina, Fidei "Defenſores, &c. Prædilecto & Fideli Noſtro *Rob'to Sydney de Penſhurſt*, Chevalier, Salutem: Cum "Parliamentum Noſtrum, pro arduis & urgentibus Negotiis, Nos, Statum & Defenſionem Regni "Noſtri *Angliæ* & Eccleſiæ *Anglicanæ* concernen apud Civitat. Noſtram Weſtm. nunc congregat. "exiſtit, vobis, ſub Fide & Ligeantia quibus Nobis tenemini, firmiter injungendo, Mandamus, "quod, conſideratis dictorum Negotior. Arduitate, & Periculis imminentibus, ceſſante Excuſa- "tione quacunque, ad Parliamentum Noſtrum prædict. perſonaliter interſitis, Nobiſcum, ac cum "Prælatis, Magnatibus, & Proceribus, ſuperdictis Negotiis tractatur. veſtrumque Conſilium "impenſur. Et hoc, ſicut Nos & Honorem Noſtrum ac Salvationem & Defenſionem Regni & "Eccleſiæ prædict. Expeditionemque dictor. Negotior. diligitis, nullatenus omittatis.

"Teſtibus Nobis ipſis apud Weſtm. xi° Die Julii, Anno Regni Noſtri Primo.

"BARKER."

The ſaid *Robert* took his Seat in the Houſe of Lords on the ſame Day, immediately after Lord *Berkeley's* Son took his Seat. The Journals ſtate theſe Facts in the following Words:

"This Day *Charles Berkeley* Lord *Berkeley*, Chevalier, eldeſt Son of *George* Earl of *Berkeley*, hav- "ing received his Majeſty's Writ to ſummon him to ſit in this preſent Parliament, was this Day "introduced in his Robes by the Heralds, and the Gentleman Uſher going before him between the "Lord *Delawarr* and the Lord *Ouſulſton*.

Lords Journals, ibid.

"In like Manner *Robert Sydney de Penſhurſt*, Chevalier, eldeſt Son to *Philip* Earl of *Leiceſter*, was "introduced in his Robes, between the Lord *Delawarr* and the Lord *Ouſulſton*, and having preſented "his Writ of Summons to the Speaker on his Knee, who delivering the ſame to the Clerk of the "Parliament, it was read at the Table, and afterwards he was placed on the Baron's Bench in his "Father's Barony, next to Lord *Chandois*.

Ibid.

And the above Writ being read,

"Next the Lord *Berkeley* and the Lord *Sydney* took the Oaths, and made and ſubſcribed the "Declaration in purſuance of the Statutes."

Lords Journals, Vol. 15. p. 603.

The ſaid *Robert* Lord *Sydney* of *Penſhurſt*, being ſummoned to the next enſuing Parliament, by the ſame Title, ſat and voted therein by the above Title, in his Father's Life-time.

12 Report 70, Lord *Abergavenny's* Caſe.
Selden's Titles of Honour, p. 746.
Co. Lit. 9. b. 16. b.
2 Black. Comm. 108.
1 Black. Com. 400, 401.
Holt. Skin. Rep. 520.

That a Writ of Summons to Parliament, directed to any temporal Perſon who ſits in purſuance of it, although it contains no Words of Limitation, does ennoble the Perſon to whom it is directed, and his lineal Deſcendants, or, as it has been ſometimes expreſſed, gives a Barony in Fee, is a general Rule of Law ſo fully eſtabliſhed, and is ſo little liable to be controverted at preſent, that it is preſumed to be unneceſſary to refer to the innumerable Authorities contained in the Books of Law, and the Reſolutions of the Houſe of Peers in ſupport of it.

The preſent Claim therefore muſt be admitted, unleſs it can be ſhewn that the Effect of a Writ of Summons directed to the eldeſt Son of an Earl or Viſcount, by the ſame Title as that of his Father's Barony, or to the eldeſt Son of a Baron who has Two or more Baronies, by a Name the ſame as that of one of his Father's Baronies, is different from the Effect of a Writ of Summons directed to other Commoners. His Majeſty's late Attorney General has adopted a Notion of this Sort, and has ſtated in his Report, that the Effect of a Writ of Summons in ſuch Caſes is to accelerate the Succeſſion of the Son to the Barony, which, on his Father's Death, would deſcend to him, and that the Extent of the Inheritance depends on the Nature of his Father's Title to the Barony, whether in Fee or Tail Male.

It is admitted by the late Attorney General, that a Writ of Summons ſo addreſſed, if its Effect is ſuch, forms an anomalous Caſe, and a Caſe which has never been preciſely determined. It is contended further, that this Doctrine of Acceleration is perfectly novel; that it never occurred before to any of the great Lawyers of this Country, that a Writ of Summons in ſuch Caſes had ſuch an Operation; and that there is nothing of Authority to be found in any Law Book, or in the Journals of Parliament, to countenance the Notion.

The Practice of thus calling to Parliament the Sons of Peers, is ſtated by the Report to have exiſted as far back as the Reign of *Edward* the Fourth; and if the Doctrine of the Report can be maintained, it is extremely ſingular that every Lawyer, who, ſince the Law of Parliament upon this Subject has been conſidered as ſettled, has treated upon the Effect of a Writ of Summons to Parliament in which there are no Words of Limitation (with Exception only of the Author of a Tract upon the Origin and Manner of creating Peerages, whoſe Reaſoning the Report ſeems to abandon, though it adopts the Reſult of it, and who contends againſt many of the moſt acknowledged Principles of the Law relating to Peerages) ſhould have ſtated in general Terms, without Reſerve, Qualification, or Exception, that ſuch a Writ operates to ennoble the Perſon to whom it is directed, if he ſits in conſequence of it, and his lineal Deſcendants. By all Writers of Authority it has been obſerved, that Letters Patent in which there are no Words of Limitation, give the Grantee a Dignity for Life only; but it does not ſeem to have occurred to any ſuch Writer that a Writ of Summons where there are no ſuch Words, could enure to the Perſon to whom it is addreſſed for his Life only, or could enure, where there are not ſpecial Words in the Writ ſo to direct the Courſe

"Enquiry into the Origin and Manor of creating Peers," written on purpoſe to overturn all Peerages created by Writ at the Time of Peerage Bill, 1719.

Courſe of the Inheritance, to him and his Heirs Male, or any other particular Line of Deſcendants. It may be ſafely aſſumed, that the Doctrine is not to be found in any Law Book of Authority; and the Doctrine is ſo extremely ſingular, that it may be very confidently aſſerted, that if the Law acknowledged the Doctrine, it could not have been unknown or unnoticed by the ſeveral great Lawyers who have conſidered the Nature and Effect of theſe Writs.

2 Salk, 510. Skinner, 519. Caſes Temp. Holt, 533. Co. Lit. 9. b. 16. b. 1 Black. Com. 400, 401. 2 Black. 108.

There are no Principles of Law to be found in the Books which countenance this Doctrine; but on the other Hand it is apprehended, that it is a Principle of Law capable of being fully eſtabliſhed, that the Effect of a Writ of Summons where there are no ſpecial Words to direct the Courſe of the Inheritance, is neceſſarily ſuch as Mrs. *Perry* contends for, and that this prerogative Act of making a Peer muſt be taken as intended to have its uſual known and general Effect, unleſs there are ſpecial Words in the Writ to denote that it is intended to have a different, ſpecial, more limited, or more enlarged Effect.

The Deciſions and Determinations of the Houſe of Lords, upon the Effect of thoſe Writs, it is conceived, agree with the Doctrines in the Books of Law in which the Subject has been conſidered; and the Merits of Claims like the preſent have in Fact been decided upon in ſeveral Caſes.

Firſt. In the Caſe of the Barony of *Clifford* of *Launſburgh*, which was granted by Patent to the Earl of *Cork*, with Limitation to Heirs Male; (and who was alſo created Earl of *Burlington*, and with like Limitations;) his Son was in his Life-time called up by Writ, and having ſat and voted, died; his Son, the Grandſon of the Earl of *Burlington*, upon his Father's Death claimed to be intitled to the ſaid Barony to which his Father had been called, and, living his Grandfather, it was confirmed to him by the following Reſolution.

Lords Journals, Die Martis, 20 *Nov.* 1694.

" The Lord Preſident reported from the Lords Committee for Privileges, to whom it was re-
" fered to conſider, Whether if a Lord called by Writ into the Father's Barony ſhall happen to die
" in the Life-time of his Father, the Son of that Lord ſo called be a Peer, and hath Right to de-
" mand his Writ of Summons? That their Lordſhips find no Precedent in this Caſe.

" A Debate ariſing, Whether *Charles* Lord *Clifford* (Son and Heir of *Charles* late Lord *Clifford*,
" of *Launſburgh*, deceaſed) who was called by Writ to Parliament in the Life-time of his Father,
" the preſent Earl of *Burlington*, hath Right to ſit in Parliament;

" This Houſe was of Opinion, That the ſaid *Charles* now Lord *Clifford*, by virtue of his Father's
" Writ, hath Right to a Writ of Summons to Parliament, as Lord *Clifford* of *Launſburgh*."

Ibid. Die Mercurii, 21 *Nov.* 1694.

" This Day *Charles* Lord *Clifford* of *Launſburgh* ſat firſt in Parliament upon the Death of his
" Father *Charles* late Lord *Clifford* of *Launſburgh*, and took the Oaths, and made and ſubſcribed the
" Declaration purſuant to the Statutes."

Second. In the Caſe of the Barony of *Harvey* of *Ickworth*,

Lords Journals, 12th *June* 1733.

" *John Harvey*, of *Ickworth*, in the County of *Suffolk*, Chevalier, eldeſt Son of *John* Earl of *Briſtol*,
" having received his Majeſty's Writ to ſummon him to ſit in this Parliament, was in his Robes
" introduced between the Lord *Delawarr* and the Lord *Walpole*, alſo in their Robes, &c. *as in*
" *all Creations*."

In the Year 1743, on the Death of the ſaid *John* Lord *Hervey*, his Son was ſummoned of Courſe as his Heir, and as inheriting the Barony obtained by ſaid Writ:

Lords Journals, 1ſt *Dec.* 1743.

" *George William* Lord *Harvey* ſat firſt in Parliament after the Death of his Father *John* Lord
" *Harvey*."

Lords Journals, 14th *March* 1736-7.

Third. The Duke of *Athol* claiming through a Female the Barony of *Strange*, to which *James* the Son of *William* Earl of *Derby* had been called in his Father's Life-time by Writ, dated the 17th *February* 1627-8, it was confirmed to him.

Ibid. 25th *May* 1737.

Fourth. Upon which the Earl of *Burlington* claimed, as Heir to *Henry Clifford*, Son of *Francis* Earl of *Cumberland*, the Barony of *Clifford*, which had been gained by his Great Grandfather *Henry*, by his having been called by Writ, dated 16th *February* 1627-8, and ſitting in purſuance thereof in the Life-time of his Father *Francis* Earl of *Cumberland*. This Claim was allowed.

The Attorney General indeed, in his Report as to the Two laſt-mentioned Caſes, has ſtated, that it was inſiſted that *William* Earl of *Derby*, and *Francis* Earl of *Cumberland*, were not ſeiſed of the Baronies at the Time their reſpective Sons were ſummoned to Parliament, and therefore that the Writs of Summons muſt operate as new Creations.

Ibid. 20th *January* 1628. 26th *March* 1628.

Whether they were or were not ſo ſeiſed, it is apprehended that the Writs muſt have that Operation: But the Fact is, that the Sons had Precedence according to their Fathers ſuppoſed ancient Baronies; and if the Fathers were not ſeiſed, the Crown certainly iſſued its Writs under the Idea that theſe two Earls were ſeiſed of the ſaid Baronies; and the Sons had the Precedence in the Houſe accordingly, and therefore the Deſcendants of theſe Peers owe their Titles to their Peerage to a Miſtake, in caſe the Attorney General's State of the Fact is correct.

Theſe Authorities will certainly have great Weight, as it is believed that no Reſolution of the Houſe can be cited to warrant the Doctrine ſtated in the late Attorney General's Report, and which Doctrine is moſt certainly no where aſſerted in Terms in its Proceedings. If a Writ directed to the Son of a Peer, calling him to Parliament by the ſame Stile as that of his Father's ancient Barony, or

of

of one of his Father's ancient Baronies, does not ennoble him and all his lineal Deſcendants, it ſhould ſeem to be its moſt natural Effect to give Dignity to the Son only for Life; but the Authorities above referred to, prove that the Dignity is deſcendible, and that the Writ, without Words of Inheritance, creates a Fee even in this Caſe. This, the late Attorney General was obliged to admit; but he has further ſtated, that it is deſcendible only to the ſame Line of Heirs as are in the Succeſſion to the Father's ancient Barony. As the Report contends againſt the general Rules of the Common Law, and of the Law of Parliament, it is inſiſted on the Part of Mrs. *Perry*, that it is incumbent upon thoſe who maintain the Doctrine ſtated in it, to prove clearly from the Principles of the Common Law, and the Law of Parliament, that a Dignity thus granted is not generally deſcendible, and that the Grantee hath only a qualified Fee; till that is made out, ſhe is entitled to the Benefit of thoſe general Rules.

The Reſolutions of the Houſe, whenever the Precedence of the Sons of Peers called by Writ in the Father's Life-time, hath been queſtioned, conſider them as being Barons by a new Creation, and not by Acceleration, Transfer, or Conveyance, Terms not as yet applied in Parliament to this Subject; and this Fact, as well as the Forms upon introducing ſuch Peers into the Houſe, ſhews, though the Report ſeems to intimate the contrary, that the Writ does operate to *create* a new Dignity, as well in Caſes where the Father of the Perſon ſummoned was ſeiſed of a Barony by the ſame Title as that by which the Son is called, as in Caſes where the Father was not ſeiſed. The fair Inference from the Reſolutions of the Houſe touching Precedence, though the Report contends otherwiſe, ſeems certainly to be, that the Houſe has been anxious to diſtinguiſh between the Matter of Right, and what its Curteſy had permitted.

Lords Journals, Jovis 19th *February* 1628.

" Lord *Percie* being ſummoned by Writ in his Father's Life-time, and claiming Precedence of " Lord *Abergavenny*, on the Reference to the Committee a Queſtion aroſe, and the Houſe referred " it to the Committee.

" To conſider, Whether, ſince the Statute of 31ſt *Henry* VIII. an Earl's eldeſt Son, called by " Writ to his Father's ancient Barony, is to take place in the Houſe according to his Father's " Barony, or not; and ſo alſo of the Son of a Viſcount; and ſo alſo of the Son of a Baron having " Two Baronies?—And it was agreed, That the ſaid Committee ſhall proceed on *Monday* next to " determine the Precedency of the Two Baronies of *Abergavenny* and *Percie*, but not to meddle " with other Matter referred unto them at that Time."

Had there been the leaſt Idea, that a Writ of this Sort did not operate as a *new Creation*, and as a Grant of a Barony in Fee, it is impoſſible that ſuch Doubt could have occurred to the Houſe; for, had it been underſtood as clear, that its Effect was to give only an Intereſt in the Father's Barony by Acceleration or otherwiſe, the Houſe could not poſſibly have doubted about the Precedence; but the Houſe conſidering Peers of this Claſs as claiming by new Creation, ſeem only deſirous to have it ſettled, Whether the Precedence, which before the Statute was given in ſuch Caſes as Matter of mere Curteſy, could, after the Statute, be allowed in all Caſes, or in any Caſe?—It is extremely probable, that the ſame Doubt ſuggeſted the Propriety of the Reference in 1694, mentioned below; and the Proceedings of the Houſe that Year afford much Argument in Favour of the preſent Claim.

Lords Journals on the 19th *March* 1694.

For on the 19th March 1694, it is reſolved, " That if a Perſon ſummoned to Parliament by Writ, " and ſitting, die, leaving Iſſue Two or more Daughters, who all die, one of them only leaving Iſſue, " ſuch Iſſue has a Right to demand a Summons to Parliament."

The Terms of this Reſolution ſtate no Diſtinction in the Caſe of Peers called by Writ by the Name of their Fathers Baronies; and it is very ſingular, that the Terms of ſuch a Reſolution ſhould not ſtate an Exception with reſpect to the Iſſue of a Daughter of ſuch a Peer, as the Iſſue of ſuch Daughter, if the Grandfather's Baronies had been granted in Tail Male, could not, conſiſtent with the Doctrine oppoſed to Mrs. *P*'s Claim, have any Right to demand a Summons to Parliament.

Lords Journals, 20th *March* 1694.

The Houſe could not overlook the Caſe of the Iſſue of the Daughter of ſuch a Peer; for on the very next Day " they refer the Queſtion of Precedence of ſuch Peers as ſhould be ſummoned to the " Houſe by Writ into their Fathers Baronies, and of the Deſcendants of ſuch Peers, to the Opinion " of the Twelve Judges; who were ſummoned to attend the Houſe accordingly."

The Report taking Notice that this Queſtion was not afterwards reſumed, ſtates it to be probable, that the Lords ſatisfied themſelves without conſulting the Judges, that theſe Peers were entitled to the ſame Precedence and Rights as they would have been if they had ſucceeded to their Fathers ancient Baronies by Deſcent, and that the Writs only accelerated the Poſſeſſion.

This Queſtion was made, it appears, in 1628, it was reſumed in 1694; and it ſeems juſt as rational to infer from the Fact, that no Steps were taken during that long Period, to decide the Point, that the Lords had ſatisfied themſelves on the Point before 1694, as it is to draw the Inference made by the late Attorney General, from what has paſſed ſince. The Truth is, that the Reference reſts on Conjectures merely. The Queſtion of Precedence, as Matter of Right, has been a Second Time dormant for near a Century; it will now be decided; but Mrs. *Perry* claims Precedence only from the Day on which her Anceſtor, created by Writ, was introduced into the Houſe.

What the late Attorney General calls an " Acceleration of the Son's Succeſſion to the Father's Barony," the Writer from whom the Notion is borrowed, hath termed a " Transfer or Conveyance of the Father's Barony to the Son in the Father's Life-time." The Report, though it adopts the Notion in Subſtance, has not expreſſed it by the ſame Term; and to have inſiſted that the Effect of the Writ was to transfer or to convey the Father's Dignity, would certainly have been a Propoſition too manifeſtly repugnant to the known Law of the Land and of Parliament, to be ſtated in *Terms*.

It

Lords Journals, 1ſt *Feb.* 1740. Lord *Ruthen's* Caſe.
Lords Journals, 18 *June* 1678. Lord *Purbeck's* Caſe.
Skinner, 437, 527, 528. 4 Inſt. 355.

It is clear, no Dignity or Honour can be transferred, aliened, granted, ſurrendered, or loſt by Non-claim, or the ſmalleſt Intereſt therein parted with, but by Attainder or Act of Parliament. It cannot be merged in a higher Dignity, as a Barony in an Earldom, and much leſs can it be drowned in another Barony or Dignity of equal Degree.

This Notion however of a Transfer or Conveyance of a Peerage, is in fact included in the Term "Acceleration," uſed in the Report. For it muſt be admitted that as no Two Perſons can at the ſame Time enjoy the ſame Honour, though Two Perſons may at the ſame Time have Baronies of the ſame Name, it is impoſſible that the Son's Succeſſion to the Father's Honour *can be accelerated*, unleſs the Father parts with the Honour, or with ſome Intereſt in it, which he cannot do.

There is one remarkable Inſtance, when Two different Perſons had Baronies of the ſame Name at the ſame Time.

Collins's Peerage, Titles Duke of *Rutland*, Earl of *Exeter*.

The Title of *Roſs* of *Hamlake*, was carried by a Female from the Family of *Manners*, Earls of *Rutland*, to that of the *Cecils*, Earls of *Exeter*; yet King *James* the Firſt created the Earl of *Rutland* Lord *Roſs* of *Hamlake*, by Patent 22d *July*, in the Fourteenth Year of his Reign. The ancient Title of *Roſs* ſoon after reverted to the Earls of *Rutland*, by the Death of *Cecil* Lord *Roſs* without Iſſue.

If the Succeſſion of the Son to the Father's Dignity cannot be accelerated, unleſs the Father parts with it, it will follow, that if the Son commits Treaſon, or dies in the Father's Life-time without Iſſue, the Dignity would be loſt to the Father and his Deſcendants, and to any Heirs of the Body of the Father by a Second Wife; to both which, if the Father's eldeſt Son was in the Father's Life-time attainted or died without Iſſue, the Father's Honours, the Succeſſion to which had not been thus accelerated, would certainly deſcend. On the other Hand, it is conceived, that if after the Succeſſion is accelerated, the Father ſhould commit Treaſon, by which all his Honours would be forfeited, and the Deſcent of them to his Son be barred, yet the Son and his Poſterity would enjoy the Honour of the Barony given by the Writ; which proves, that the Father hath nothing in the Dignity of the Son, for otherwiſe it would be forfeited, and therefore that Acceleration, if the Son really hath the ſame Dignity that the Father had, muſt operate in Truth as an actual Transfer of the Dignity, which cannot legally be.

If this Acceleration cannot operate without having the Effects of a Transfer, the King by accelerating might deprive the Father of his Honours; for it is clear, and indeed ſtated by the Report, that upon Acceleration the Son would take all the Father's Inheritance in the Barony; and this might be done againſt the Father's Conſent, and in that Caſe in direct Violation of thoſe Reſolutions on which, and on which almoſt alone, the Inheritance of the Peerage, and the Subjects Intereſt in that Inheritance, depends.

If the Crown can accelerate the Son's Succeſſion to One Barony, where the Father has Two or more, it will be difficult to ſtate the Principle which could reſtrain the Crown from accelerating the Son's Succeſſion to all, or to the only one, where the Father has but One.

Whenever the eldeſt Son of a Peer is originally ſummoned to Parliament by Writ, he is introduced as another Commoner newly created, with all the Forms of Creation; but when the Heir of the Son ſo called takes his Seat on his Father's Death, he takes it as all the other ancient Lords do at the Commencement of a new Parliament, without any of the Forms.

Suppoſe a Peer ſeiſed of Two Baronies, the one an ancient Barony in Tail Male, the other a more modern one in Tail general; and that ſuch a Peer hath a Son and a Daughter, and the Son is called to Parliament in the Father's Life by the Name of the Barony of which the Father is ſeiſed in Tail general. If the Son is a Peer by Acceleration, having the ſame Dignity which his Father before had, and he ſhould be attainted, it muſt follow that the Daughter could ſucceed to neither Barony, for that which was capable of deſcending from the Father to the Daughter would have been by Acceleration conveyed or transferred from him to the Son and his lineal Deſcendants.

Sir *William Dugdale's* Liſt at the End of his Writs of Summons.

In caſe theſe Writs to the eldeſt Sons of Peers ſhall be decided, to give them and their Deſcendants a Barony, there is no Reaſon to apprehend any conſiderable Increaſe in the Number of Peers. It is Three hundred Years ſince the Firſt of theſe Peers was called, viz. 22 *Edward* IV. the Number in *Dugdale's* Liſt amounts only to Forty-two, and of ſuch others as can be collected from that Time amounts to Seventeen; the whole Number in Three Centuries is but Fifty-nine.

Above Half of theſe Baronies are extinct; there being no Iſſue deſcended from the Perſons ſo ennobled, a very great Number of them are held by Perſons ſeiſed of more ancient Baronies in Fee, or having higher Titles, and ſome are in Abeyance among the Nobility. The Duke of *Bolton* has Four of them, each by the Title of *St. John* of *Baſing*, together with the ancient Barony created by Writ.

The Duke of *Leeds* has Two of them, viz. *Oſborne* of *Kiveton*, and theſe will deſcend to Lord *Oſborne* of *Kiveton*, his Son, who was called by Writ. The Duke of *Devonſhire* has Three of them, viz. *Clifford*, *Clifford of Lanſborough*, and *Cavendiſh* of *Hardwicke*; Lady *Willoughby* Three of them, all *Willoughby* of *Ereſby*, with the ancient Barony created by Writ. In Truth it is very unlikely that any of them ſhould deſcend to any other than Peers. This Barony of *Sydney* is in fact the Firſt claimed by a Female, or by any Perſon not being Heir to higher Titles; but though the Claimant is not ſuch Heir, ſhe is nevertheleſs the Repreſentative of a very noble Family.

Dugdale's Liſt at the End of his Writs of Summons, to which Lord *Lynn* is added.

If the Precedence of theſe Peers was Matter of Right, and not, as is here aſſerted, Matter of Curteſy, this ſort of Claim could not greatly affect the Rank of the Peers; there have been but

Four Peers to whom it has been extended who had not Precedency out of the Houſe before all the Barons, viz. Lord *Conway*, Son of Viſcount *Conway*; Lord *Lynn*, Son of Viſcount *Townſend*; Lord *Monteagle*, Son of Lord *Morley* and *Monteagle*; and Lord *Conyers*, Son of Lord *Darcie Meinill* and *Conyers*; which Four were all Heirs to higher Titles by Deſcent: And it is to be remarked, that this Curteſy began at a Time when the King gave Precedence at Pleaſure; *Henry* the Sixth gave the Earl of *Warwick* Precedence of all Earls, and he gave Precedence at his Pleaſure in many other Inſtances.

4th Inſt. 361, on Stat. of Precedency.

The Peers therefore, when the Titles of Peers Sons called by Writ put the Houſe in Mind of their Deſcent, have always ſeated them according to the Curteſy; and when Noblemen's Sons have been called by Titles which did not put them in Mind of their Deſcent, they have been generally, but not always (as in Caſe of the Lord *Boyle* of *Lanſburgh*) placed as Junior Barons; as Lord *Butler* of *More Park*, Lord *Manners* of *Haddon*, and Lord *Powlett* of *Baſing*, their Fathers having no Title of the ſame Name.

Lords Journals, 18 *Sept.* 1666.
Ibid. 2 *May* 1679.
Ibid. 18th *July* 1689.
Ibid. 6 *May* 1717.

It ſeems at leaſt as reaſonable that the Favour of a Barony in Fee by Writ ſhould be granted to the Sons of the ancient Nobility, as to other Commoners.

The Favour of the Crown has often by Patent given more than what is contended to be the Effect of theſe Writs; the Title of *Lucas* of *Crudwell*, enjoyed by the preſent Marchioneſs de *Grey*, can never be in Abeyance, but always will be held by the eldeſt Daughter on Want of Heirs Male; the Title of Duke of *Marlborough* was granted by Patent to *Churchill* and his Daughters, according to Seniority, and their Heirs Male; and by Patent, often more than the Iſſue Male of the Perſon ennobled, is included, for they are granted with Remainder to others, either Male or Female, and their Male Heirs.

Dugdale's Baronage, 2 Vol. Title, *Lucas* of *Crudwell*.
Collins's Peerage, 1ſt Edit. Title, Duke of *Marlborough*.

A Barony in Fee, in Effect ſeldom beſtows Dignity upon thoſe who would not derive it under a Grant of a Barony in Tail Male; it does where there is but One Daughter, if there are more, it is in Abeyance, in which it may remain for ever; and if confirmed to One Co-heir, by Favour of the King, the Confirmation of the ancient Title is as great a Favour as the Creation of a new Peerage; and if it deſcends to an only Daughter, it generally falls by Marriage among the Peerage, and the Iſſue of the Marriage inherit to both Father and Mother; if an only Daughter is married to a Commoner, it is generally to One by whom the Peerage is not diſgraced.

With reſpect to the Inſtances alluded to in the late Attorney General's Report, of Perſons ſummoned by Writs to Parliament by the Titles of their Wives, whoſe Deſcendants were not conſidered as ennobled, although ſuch Perſons ſat in purſuance of the Summons; it is not contended by Mrs. *Perry*, that in the very early Periods of our Hiſtory every Writ of Summons to Parliament, where the Seat was taken in conſequence of it, ennobled all the Deſcendants of the Perſons to whom it was directed; for a very ſlight Attention to *Dugdale's* Hiſtory of Writs of Summons will afford many Inſtances to the contrary. But it is inſiſted, on the Behalf of Mrs. *Perry*, that for above a Century before the Writ of Summons iſſued, by which the preſent Barony is claimed, and down to the preſent Time, it hath been eſtabliſhed Law, that all Writs of Summons (except ſuch as are directed to ſpiritual Perſons) where a Seat is afterwards taken, have the Effect of ennobling the Perſons ſo ſummoned and their Deſcendants.

Selden's Titles of Honour, Page 571, 586. 3d Edit.

It is likewiſe further to be obſerved, that ſo long as all Baronies were purely by Tenure, which was the Caſe until ſome Time in the latter End of the Reign of King *John*, the Huſbands of Femes Covert ſeiſed of Baronies, were conſidered as ſeiſed of ſuch Baronies in the Right of their Wives, and therefore entitled to a Writ of Summons for and liable to perform the Services annexed to ſuch Baronies; but that ſuch Writs of Summons would not ennoble any of their Deſcendants any more than the Writ of Summons ennobled the Deſcendants of the Biſhops, who now are what all originally were, Barons purely by Tenure.

Black. Biſhops.

Dugdale's Liſt of Perſons ſummoned in Right of their Wives, at the End of his Summons to Parliament.

But according to *Dugdale*, the laſt Perſon ſummoned to Parliament by the Title of his Wife's Barony, was ſo long ago as the Third Year of King *Henry* the VIIIth; and in this particular the Law is clearly altered ſince that Time. And it is ſubmitted, that no fair Inference can be drawn to the Prejudice of Mrs. *Perry*'s Claim, from the Inſtances ſo alluded to by the late Attorney General, for the Reaſons before mentioned, as well as becauſe the Houſe of Peers have clearly determined, in the Inſtances before mentioned, that a Writ of Summons to the eldeſt Son of a Peer, gives an Eſtate of Inheritance of ſome Sort in the Barony to which ſuch Perſon is ſummoned; which in the Caſe of ſuch Huſbands, hath never been determined; nor can it ever well come in queſtion, for if no Iſſue of ſuch Marriage, there could be no Perſon to claim, and if Iſſue, they would inherit to the Mother's more ancient Barony.

The Claimant claims Precedence from the Day that her Grandfather was introduced into the Houſe by Creation by Writ without Patent, viz. 11 *July* 1689, which is ſtrictly regular, according to the Statute 31ſt *Henry* VIII. and humbly hopes, that upon producing ſuch Proofs of her Pedigree as to your Lordſhips ſhall ſeem ſufficient, your Lordſhips will be of Opinion, that ſhe is entitled to the Barony of *Sydney* of *Penſhurſt*; and that the ſaid Dignity and Honour will be confirmed and allowed to her, and the Heirs of her Body, with Precedence, according to the Date of her ſaid Grandfather's taking his Seat in the Houſe of Lords, 11th *July* 1689.

Lords Journals, 11th *July* 1689.

ROBERT SEYMOUR SADLER,
JOHN SPRANGER,
JOHN SCOTT.

PEDIGREE.

Sir ROBERT SIDNEY,
Created Baron of *Penſhurſt* by Patent dated 13 *May*, 1 *Jac.*
Viſcount *Liſle* by Patent dated 4 *May*, 3 *Jac.*
Earl of *Leiceſter* by Patent dated 2 *Aug.* 16 *Jac.* I.
Died 13 *July* 1626.
Buried at *Penſhurſt*.

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Sir ROBERT SIDNEY,
Knight of the Bath, Earl of *Leiceſter*, and Viſcount *Liſle*, &c.
Died at *Penſhurſt* 2 *Nov.* 1677.

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PHILIP SIDNEY,
Earl of *Leiceſter*, Viſcount *Liſle*, &c.
Died in *London* 6 *March* 1697-8.
Buried at *Penſhurſt*.

|

ROBERT SIDNEY, Son and Heir,
Summoned to Parliament by Writ in his Father's Life-time, in 1 *W.* and *M.* and alſo ſummoned to the next enſuing Parliament in 7 of *W.* and *M.* by the Stile and Title of *Robt^o Sydney de Penſhurſt*, Ch^r.
Died 10 *November* 1702.
Buried at *Penſhurſt*.

PHILIP SIDNEY,
Earl of *Leiceſter*,
Died 24 *July* 1705,
Without Iſſue.

JOHN SIDNEY,
Earl of *Leiceſter*,
Died unmarried, 27 *September* 1737,
Succeeded by *Joceline*, his only ſurviving Brother.

THOMAS SIDNEY,
Colonel of the *Iniſkilling* Regiment of Dragoons,
Married *Mary* Daughter and Coheir of Sir *Robert Reeve*.
Died 27 *January* 1728-9.
Buried at *Penſhurſt*.

JOCELINE SIDNEY,
Earl of *Leiceſter*,
Died 7 *July* 1743,
Without Iſſue.

MARY SIDNEY,
Married to Sir *Brownlow Sherrard*, Baronet,
Born the 24th *October* 1711.
Died without Iſſue in 1758.

ELIZABETH SIDNEY, the Claimant,
Married to *William Perry*, Eſq;
Born the 22d of *December* 1713,
And the preſent Heir-general of the Family.

The above Pedigree is made out by the ſeveral Proofs mentioned in the Margin of the Firſt Page.

17th June 1782

Resolved and Adjudged that the Claimant hath no right in consiquance of her Grandfathers Summons and sitting

CASE

OF

ELIZABETH PERRY,

Of *Penſhurſt-Place*, in the County of *Kent*, Relict of *William Perry*, Eſquire, of *Turville-Park*, in the County of *Buckingham*,

Reſpecting her Claim to the Barony of *Sydney* of *Penſhurſt*.

To be heard before the Lords Committees for Privileges, the Day of 1782.

BIRCH, Chancery Office, - - Solicitor.